

REMARKS/ARGUMENTS

Reconsideration of the present application, as amended, is respectfully requested. It is noted that November 3, 2007 was a Saturday.

A. Status of the Claims and Claim Amendments

As a result of the present amendment, claims 1-24 are presented for further prosecution. Claims 1 and 14 have been amended by this amendment to more particularly recite that the marking on the tablet is a covert marking. Support for these amendments can be seen, for example, from the discussion in the section entitled "Covert Markers" on page 9 of the specification.

Claims 8 and 20 are amended to recite embodiments in which visible or overt markings are included. Support for these amendments can be found, for example, from the discussion on page 3, lines 14-24.

No new matter was added by the amendments.

B. Claim Objections

The Examiner objected claims 10 and 23 for formality issues and provided suggestions for the correction.

The Applicants have substantially adopted the Examiner's suggestions and amended claims 10 and 23 accordingly.

C. Claims Rejections under 35 U.S.C. § 112

The Examiner rejected Claim 9 for lack of sufficient antecedent basis for "said covert marking".

The Applicants have amended claim 1 to recite the marking is covert marking, which

provides sufficient antecedent basis for Claim 9.

D. Claims Rejections under 35 U.S.C. § 102 based on Nellhaus

The Examiner rejected the subject matter of claims 1, 3, 4, 6-8, 11-18, 20 and 21 as being anticipated by Nellhaus (U.S. Patent No. 6,543,692).

The Applicants have amended claims 1 and 14 to recite the marking being a cover marking, which is distinguished from the teaching of Nellhaus, since Nellhaus only teaches visible markings.

The Applicants noted that the Examiner has rejected the subject matter of covert markings in claims 8 and 20, as originally filed, based on Nellhaus. The Examiner cited the hybrid data matrix symbol 90 in figure 12 of Nellhaus and its disclosure in column 5, lines 49-57 for these rejections. However, a closer reading of Nellhaus reveals that its symbols and markings are all visible, even though it may not be visually readable. In other words, Nellhaus does not teach covert markings.

Nellhaus relates to a bar code schema in combination with a common visual symbol that is easily recognized. The teaching in Figure 12 relates to a combination of visually readable and machine readable symbols including symbol 90, which are all visible. Referring to the discussion of symbol 90 in the 1st full paragraph of column 5, it indicates that the Data Matrix symbol 90 includes a frame 92 around a data field 95. The frame 92 comprises a perimeter alignment pattern that comprises two contiguous solid bars 94 of dark squares 96 and two granularity bars 98 formed of alternating patterns of dark squares 100 and light squares 102. In the hybrid system, the data field 94 includes double sized squares 104 for ease of printability and readability. Nellhaus emphasizes that, given the comparative size of the squares, it "can be visually examined for damage and visually decoded if necessary"(Column 5, lines 28-30). It is clear that symbol 90 in Nellhaus is visible, since its component squares 96, 100 and/or 102 are all visible.

This reading is further evidenced from one of the objectives of Nellhaus. Nellhaus teaches “[O]ne solution to the competing interests of maximizing the visibility of the data squares within a data matrix orientation and granularity frame, and minimizing the overall size of the matrix is provided by doubling the size of the data squares in comparison with the squares forming the frame”. Therefore, visibility of the data squares inside the symbol 90 is one of the major objectives of Nellhaus.

In contrast, the present invention claims the dosage forms with covert markings. As indicated in the discussion in the 1st full paragraph on page 10, these covert markers cannot usually be detected by the human senses, and are extremely difficult to detect through normal analytical techniques.

In order to maintain an anticipation rejection under 35 U.S.C. § 102, the prior art must disclose each and every element of the rejected claims with sufficient clarity to prove its existence in the prior art. Since the teaching of Nellhaus is limited to tablets having human visible symbols or markings, it does not disclose the element of a covert marking as claimed in the present invention. Applicants respectfully submit that Nellhaus does not anticipate claims 1, 3, 4, 6-8, 11-18, 20 and 21 as amended.

E. Claims Rejections under 35 U.S.C. § 103

The Examiner has rejected the subject matter of claims 2, 5, 19, 23 and 24 as being unpatentable over Nellhaus in view of Sullivan (U. S. Patent No. 5,992,742). The Examiner has further rejected the subject matter of claims 9 and 10 as being unpatentable over Nellhaus in view of Johnson (U.S. Patent No. 6,171,618) and rejected the subject matter of claim 22 as being unpatentable over Nellhaus in view of Krubert. The Examiner has taken the position that it would have been obvious to modify Nellhaus to include the elements recited in these pending claims. The Applicants respectfully disagree.

Regarding Sullivan: Sullivan describes the use of micro bar codes, that are visible to the

eye, even though they might not be capable of being interpreted without a scanner or similar device. For example, Sullivan teaches “[A] bar-type code may be either printed directly on an outer surface of the pill, on another layer located beneath the outer layer of the pill yet visible from the exterior of the pill, or printed on a label that is secured to any outer surface layer or underlying layer of the pill” (see column 5, lines 5-10, Sullivan).

Regarding Johnson: Johnson teaches a dosage form containing cetirizine and pseudoephedrine. To mask the bad taste of these ingredients, Johnson further teaches a “taste-masking layer” to coat the substrate core (see column 12, lines 65-67, as cited by the Examiner). However, this taste-masking layer is not the same as that recited in Claim 9. Therefore, Johnson does not teach or suggest a covert marking that is detectable by taste.

Regarding Krubert: Krubert teaches a method of forming a printed food or baked product. It mentions that a suitable yellow ink can be Opacode ink. However, Krubert does not discuss any covert marking printed on the food or baked product. Referring to the figures 3, 3A, 4, 4A, 5 and 5A, it can be seen that all these printed marks are visible or intended to be visible to the customers. In addition, the machine used, a 4-head pan flex printer, is designed to print visible images on the product.

Therefore, no teaching or suggestion of a covert marking has been given in any of the cited references. The differences between the claimed invention and the combination of the teachings of Nellhaus, Sullivan, Johnson and/or Krubert in covert markings are not obvious to a person of ordinary skill in the art at the time the claimed invention was made, as required to maintain an obviousness rejection under 35 U.S.C. § 103(a).

F. Fees

No further fees are believed to be due. If, on the other hand, it is determined that further fees are due or any overpayment has been made, the Assistant Commissioner is hereby authorized to debit or credit such sum to Deposit Account No. 02-2275. Pursuant to 37 C.F.R. 1.136(a)(3),

please treat this and any concurrent or future reply in this application that requires a petition for an extension of time for its timely submission as incorporating a petition for extension of time for the appropriate length of time. The fee associated therewith is to be charged to Deposit Account No. 02-2275.

G. Conclusion

In view of the actions taken and arguments presented, it is respectfully submitted that each and every one of the matters raised by the Examiner has been addressed by the present amendment and that the present application is now in condition for allowance.


An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

LUCAS & MERCANTI, LLP
475 Park Avenue South, 15th Floor
New York, NY 10016
Phone: 212-661-8000
Fax: 212-661-8002

LUCAS & MERCANTI, LLP

By:


Michael N. Mercanti
Registration No. 33,966